



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
215**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: COMPLAINTS ALLEGING GENDER DISCRIMINATION IN THE FORM OF PAY INEQUITIES**
2. **PURPOSE:** To set forth the procedures for accepting and processing complaints alleging pay inequities resulting from sex discrimination.
3. **BACKGROUND:** The Fair Employment and Housing Act (FEHA), Government Code section 12940, subdivision (a), prohibits discrimination "...in compensation or in terms, conditions or privileges of employment." There is often confusion, however, regarding the distinction between allegations of "unequal pay" based on sex and the issue of "comparable worth." The Department of Fair Employment and Housing (DFEH) accepts complaints regarding pay inequities, but does not accept comparable worth cases. The definitions and contrasts between these two theories are explained below.
4. **PROCEDURES:**
 - A. **Pay Inequity Complaints:**
 - 1) The Department accepts complaints where there are allegations of pay inequities based on sex. These cases usually fall into two categories:
 - a) **"Equal pay"** cases which typically allege that pay differences between two jobs (which may or may not have the same job title) are not justified because the jobs require equal skill, effort, and responsibility and are performed under similar working conditions.

EXAMPLE: The comparison of a woman's position in a jail setting as a "matron" with that of a man's job as "jailer." Depending on the duties actually performed, paying the "matrons" differently could be a violation of the Fair Employment and

Housing Act. (See DFEH v. County of Madera (1983) FEHC Dec. No. 83-22.)

- b) Sex based "intentional discrimination" cases where decisions regarding pay are based on vague and overbroad job classifications, failure to create job descriptions which accurately reflect actual duties, and other such actions which indicate that intentional sex discrimination was part of the reason for the pay disparity.

EXAMPLE: A woman classified as a clerk-typist performed many of the duties of a higher job classification previously held by a male. In this case, the supervisor was found to have opposed the classification of women into higher paying jobs, and to have viewed women only as secretaries. Also, statistical evidence demonstrated the underutilization of women in certain job categories. The evidence clearly showed that intentional sex discrimination was part of the reason for the pay disparity (DFEH v. City of Napa Housing Authority (1981) FEHC Dec. No. 81-12).

- 2) Equal pay and intentional discrimination cases will be routinely processed.
- 3) Refer to Directive 216, "Referral of Equal Pay Cases Between the Department of Fair Employment and Housing and the Division of Labor Standards Enforcement," regarding the referral of cases involving allegations of equal pay to that agency.

B. Comparable Worth Cases:

- 1) The Department ***does not accept*** cases for investigation based on allegations of "comparable worth." The theory behind comparable worth cases is that the characteristics of dissimilar jobs may be compared to measure the relative worth, value, or equivalency of the jobs. These cases are not considered sex discrimination in violation of the FEHA.

EXAMPLE: A secretary's job (female dominated occupation) could be compared with that of a carpenter (male dominated occupation) in an effort to demonstrate

equivalent worth and establish any pay disparity as discrimination.

- 2) Complainants presenting allegations that exclusively involve comparable worth will be informed that the Department does not pursue such cases. Such complainants should be offered a "Complaint For Filing Purposes Only" ("b" complaint).
- 3) Where a decision cannot be made during intake as to whether the allegations are clearly and exclusively "comparable worth," the complaint should be accepted and immediately referred by the District Administrator to the appropriate Regional Administrator for a decision.
- 4) After review, or during the investigation, where it is found that the allegations are exclusively comparable worth, the case will be closed with Closing Category 01, "No Jurisdiction" (refer to Directive 500, "Case Closing Categories and Procedures").

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date